

## REMARKS

Reconsideration and withdrawal of the rejections set forth in the Office Action dated June 18, 2007 are respectfully requested.

### I. Double-Patenting Rejections

A. Claims 1-10, 14-18, 30, and 34 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 6,974,589 in view of Hung et al., U.S. Patent No. 5,851,818.

Enclosed herewith is an executed Terminal Disclaimer filed in accordance with C.F.R. §1.321(b) and (c) which disclaims the terminal portion of any patent issuing on the instant application that extends beyond the expiration of U.S. Patent No. 6,974,589.

The applicants submit that Terminal Disclaimer overcomes the rejection for obviousness-type double patenting over U.S. Patent No. 6,974,589 and withdrawal of the rejection is respectfully requested.

B. Claims 1-10, 14-18, 30, and 34 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 7,112,337 ("the '337 patent") in view of Hung et al., U.S. Patent No. 5,851,818.

Applicants respectfully traverse this rejection.

### B1. Analysis

In determining whether a nonstatutory basis exists for a double patenting rejection, the first question to be asked is - does any claim in the application define an invention that is merely an obvious variation of an invention claimed in the patent?. M.P.E.P. 804 II.B.1.

The pending claims are to a liposome composition comprised of a neutral-cationic lipid having the recited structure and a nucleic acid encoding for Factor VIII.

The claims in the '337 patent are to a liposome composition comprised of liposomes comprised of (i) a neutral-cationic lipid, (ii) a compound of the form

"hydrophilic polymer-dithiobenzyl linkage - lipid", and (iii) a nucleic acid entrapped in the liposomes.

Applicants submit that the pending claims are not an obvious variation of the '337 patent claims because nothing in the '337 patent claims guides one of skill in the art to omit from the claims element (ii), a compound of the form "hydrophilic polymer-dithiobenzyl linkage - lipid". The "hydrophilic polymer-dithiobenzyl - lipid" compound (element (ii)) provides a desired functional element to the composition claimed in the '337 patent, and thus makes the '337 patent claims distinct from the pending claims.

The Hung et al. teaching is cited solely for its recitation of a gene encoding for Factor VIII, and does not alter the fact that the instant claims are not a mere variation of the '337 patent claims since there is no basis for omitting a desired element from the composition claimed in the '337 patent.

Accordingly, withdrawal of the rejection is respectfully requested.

II. Conclusion

A Notice of Allowance is respectfully requested. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (650) 564-5887.

Respectfully submitted,

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